REMARKS

Claims 1-72 are pending in the present application. Claims 1-57, 60, 62, 65 and 70 were previously withdrawn from consideration. By virtue of this response, claims 58 and 68 have been amended. Accordingly, claims 58, 59, 61, 63, 64, 66-69, 71 and 72 are currently under consideration. Amendment and cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented.

Examiner Interview

Applicants thank Examiner Witczak for the telephone interview had on February 5, 2009 with the undersigned. During that interview, the cited references and the independent claims were discussed. Specifically, the undersigned discussed proposed claim amendments that further distinguish Applicants' claims from the art made of record. Examiner Witczak agreed that Applicants' claims with the discussed amendments are patentable over the art made of record. These proposed claim amendments are reflected in the amendments above and discussed in detail below.

Claim Rejections under 35 U.S.C §102(e)

Claims 58, 59, 61, 63, 64, 66-69 and 71 stand rejected under 35 U.S.C. §102(e) as allegedly anticipated by U.S. Pat. Pub. No. 2002/0111603 A1 to Cheikh ("Cheikh"). However, Cheikh fails to teach or disclose each and every element of independent claims 58 and 68, from which all remaining rejected claims depend.

Claims 58 and 68 both recite "creating access to the paranasal sinus cavity" with a "loaded conduit" (i.e., a conduit that has already been loaded with one or more biodegradable implants). Cheikh does not teach or suggest such a limitation, and in fact, teaches away from such a limitation. The Cheikh delivery devices are not used to create access to a paranasal sinus cavity, rather access is created through the use of an additional device or "invasive system." *See, e.g.,*

paragraphs [0148]-[0152] and FIGS. 1-10. Once access has been created with the invasive system, a delivery device is advanced therethrough.

The Office Action relies upon paragraphs [0306]-[0316] and FIG. 7 of Cheikh in support of the present rejection. However, neither these paragraphs nor FIG. 7 teach or suggest accessing a paranasal sinus cavity with a loaded conduit. Instead, the device of FIG. 7 is designed to deliver a device "inside a tissue, a wall or a mucous membrane." *See,* [0151]. Specifically, FIG. 7 shows a needle **13** with a "solid form **9**" that is passed into a sinus through "an internal invasive system already inserted into a cavity." *See,* [0151]. The needle then penetrates tissue, as shown in FIG. 7, where the needle "facilitates injection of the solid form **9** into the wall or the mucous membrane **17**." *See,* [0154]. Thus, the only access created by the needle is access to the wall or mucous membrane, *which occurs after access to a cavity has already taken place (with the invasive device).*

For at least the reason that Cheikh does not teach or disclose *creating* access to a paranasal sinus *cavity* with a loaded conduit, the rejections under 35 U.S.C. §102(e) of the currently pending claims cannot stand. Therefore, Applicants respectfully request that the rejection of claims 58, 59, 61, 63, 64, 66-69, and 71 under 35 U.S.C. §102(e) be withdrawn.

Claim Rejections under 35 U.S.C §103(a)

Claim 72 stands rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Cheikh in view of US. Pat. Pub. No. 2006/0162722 to Boehm et al. ("Boehm"). Cheikh was discussed in detail above with respect to claims 58 and 68 above, where it was established that Cheikh fails to teach or disclose creating access to a paranasal sinus using a loaded conduit. Boehm fails to cure this deficiency. Accordingly, Applicants respectfully request that the rejection of claim 72 under 35 U.S.C. §103(a) be withdrawn.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections and objections of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

Any remarks in support of patentability of one claim should not be imputed to any other claim, even if similar terminology is used. Additionally, any remarks referring to only a portion of a claim should not be understood to base patentability on that portion; rather, patentability must rest on each claim taken as a whole. Applicants respectfully traverse each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches, even if not expressly discussed herein. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, any amendments are made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby.

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child, or related prosecution history shall not reasonably infer that Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 577242000100. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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